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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1410

JOHN A. DUPART and REGINALD ADAMS,
Petitioners,

versus

STATE OF LOUISIANA,
Respondent.

BRIEF FOR THE STATE OF LOUISIANA IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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OPINION BELOW

The opinion of the Supreme Court of Louisiana is not yet reported, although it was decided on November 12, 1979, Docket Number 64,767. *See* Appendix of Relator's Brief, A-1 et seq.

STATEMENT

Assistant District Attorney William W. Hall, Esq., Jefferson Parish, State of Louisiana, prosecuted the defendants, John A. Dupart and Reginald Adams for the crime of simple burglary (LA R.S. 14:62). Dupart was represented by James Weidner, Esq., and Adams was represented by William Noland, Esq. The Honorable Patrick Carr was Judge presiding. After a Motion to Suppress was denied (Tr. Hearing on Motion to Suppress, p. 28), the defendants withdrew a former plea of not guilty and entered a plea of guilty to receiving stolen things following extensive *Boykinization* on November 29, 1978. (R. p. 34).

On January 24, 1979 defendant John A. Dupart, age 32, was sentenced to imprisonment at hard labor for two years and Reginald Adams, age 27, was sentenced to serve 18 months.

Convictions and sentences were affirmed by the Louisiana Supreme Court on November 12, 1979 (Docket No. 64,767).

STATEMENT OF THE FACTS

On October 12, 1978 defendants John A. Dupart and Reginald Adams were charged by a bill of information in the Twenty-Fourth Judicial District of simple burglary of a building and structure belonging to Ann DeViney, in violation of R.S. 14:62 on September 26, 1978.

On the evening of September 26, 1978 Deputy Schomaker of the Jefferson Parish Sheriff's Office received a call around 11:00 p.m. that *a robbery was in progress* at 3730 Jean Street. (Tr. on Hearing on Motion to Suppress, p. 4). When Deputy Schomaker arrived at that address, several narcotics officers informed him that one person had left the house. Deputy Schomaker proceeded to check the vicinity, and spotted a dark Oldsmobile travelling at an extremely slow rate of speed nearby, suspecting a DWI, if not the suspect burglars. (Tr. Hearing on Motion to Suppress, p. 5). When Deputy Schomaker attempted to stop the vehicle, it sped up and there was a great deal of activity in the car. (Tr. Hearing on Motion to Suppress, p. 7). The vehicle pulled over four blocks later. (Tr. Hearing on Motion to Suppress, p. 7). The defendants, John A. Dupart and Reginald Adams, were ordered to get out of the car and to place their hands on the police car. (Tr. Hearing on Motion to Suppress, p. 8). The defendants were advised that they were being detained for failure to pull over when motioned to do so. (Tr. Hearing on Motion to Suppress, p. 8). As Deputy Schomaker spoke to the defendants in their car, he spotted pieces of jewelry lying on the front seat of the car. (Tr. Hearing on Motion to Suppress, p. 9). When assistance arrived, Deputy Schomaker returned to the defendants' car and found several more pieces of jewelry lying in the front of the car, a large sledge hammer, two screwdrivers, a flashlight and brown gloves. (Tr. Hearing on Motion to Suppress, p. 10). The jewelry was later identified by the victim of the burglary as items stolen. (Tr. Hearing on Motion to Suppress, p. 17).

On November 29, 1978, hearing was held before Honorable Patrick Carr, Judge presiding, on a Motion to Suppress the evidence. The defendants' Motion to Suppress was denied. (Tr. Hearing on Motion to Suppress, p. 28). Defendants then pleaded guilty to receiving stolen things and reserved the right to appeal the trial court's ruling on the Motion to Suppress. Dupart was sentenced to serve 2 years at hard labor; Adams got 18 months imprisonment.

QUESTIONS PRESENTED

1. Whether there was reasonable cause to stop the defendants' automobile.

2. Whether the subsequent seizure of items in the automobile was valid under the doctrine of plain view.

LAW AND ARGUMENT

I.

The Police Officers Had The Right To Stop and Interrogate Someone Reasonably Suspected Of Criminal Conduct.

The right of law enforcement officers to stop and question someone reasonably suspected of criminal conduct is provided for by La. C.Cr.P. Art. 215.1 and is recognized under both Louisiana and Federal jurisprudence. *Terry vs. Ohio*, 392 U.S. 1 (1968); *State vs. Ryan*,

358 So.2d 1274 (1978); *State vs. Drew*, 360 So.2d 500 (1978), cert. den. ____ U.S. ____, 99 S.Ct. 820 (1979); *U.S. vs. Preston*, 608 F.2d 626 (CA 5, 1979).

In the instant case, from this fact situation, we may deduce the following: The officer was clearly, legitimately at the location and with sufficient probable cause to pursue his investigatory stop of the suspect. Testimony at the hearing on the Motion to Suppress revealed that the officer suspected a DWI due to the rate of speed at which the defendants were travelling. (Tr. p. 5).

In addition, the "nearness to the scene of the crime" was a relevant factor to justify the stop. *U.S. vs. Purry*, 545 F.2d 217 (D.C. Cir. 1976); *U.S. vs. Wright*, 565 F.2d 486 (CA 8, 1977), cert. denied 435 U.S. 974 (1978).

Also, the suspects were picked up in a high crime area, call it a "suspect location," *U.S. vs. Magda*, 547 F.2d 756 (CA 2, 1976), cert. denied, 434 U.S. 878 (1977), further supporting police had reasonable suspicion of criminal activity.

The record supports the police stop here by virtue of having observed the vehicle travelling at an extremely slow rate of speed, and failure to pull over when motioned to do so. (Tr. pp. 5, 8). *State vs. Rudolph*, 369 So.2d 1320 at 1325 (1979). See also, *Schneckloth vs. Bustamonte*, 412 U.S. 219, 93 S.Ct. 2041 (1973) and *Cady vs. Dombroski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706

(1973) which speaks further of "housekeeping duties of the highway," *State vs. Drew*, 360 So.2d 500 (1978) cert. denied 430 U.S. 1059, 99 S.Ct. 820 (1979). Alternatively, "furtive gestures" supported, as here, with additional facts can be given "guilty connotations". *People vs. McGaughran*, 585 F.2d 206 (1978).

Inasmuch as the facts reveal that the police officers had reason to suspect criminal conduct, the State submits that there was sufficient cause to stop and question the defendants in this case. The subsequent seizure of jewelry in the automobile was the result of observing it in plain view.

There is no merit to petitioner's Assignment of Error presented in this Question.

II.

The Jewelry Was Lawfully Seized Under The Doctrine Of Plain View.

The quintessence of each Assignment of Error goes directly to whether or not the police were legally where they were when they viewed the jewelry lying on the front seat of the car.

The sole issue is were the police legally in a place which would afford them an opportunity to exercise the exception to the Fourth Amendment known as "Plain View." The State submits there is no question.

They were on the scene, responding to a "robbery in progress." *State vs. Jefferson*, 284 So.2d 882, cert. den. ____ U.S. ____ (1974).

The doctrine that a law enforcement officer, who has a right to be where he is, may seize objects in plain view is well established in the jurisprudence.

The stolen jewelry was in plain view on the front seat of the car at the time of the arrest. Thus, under the plain view doctrine, the seizure was constitutional. *State vs. Braud*, 357 So.2d 545 (1978). It is well established that contraband in the plain view of a police officer who is legally at the location where he obtains the view is subject to seizure without a warrant. *Harris vs. United States*, 390 U.S. 234, 88 S.Ct. 992, 19 L.Ed.2d 1067 (1968); *Alderman vs. United States*, 394 U.S. 165, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969). In the instant case there is no dispute the evidence was inadvertently observed, and that it was clearly pieces of jewelry.

The law is clear also, that as the officers inadvertently saw the stolen jewelry (compare *State vs. Carter*, 363 So.2d 893 (1978)) from a vantage point that did not intrude upon a protected area or, as herein, where that protected area was entered with prior justification, there is no violation of the search warrant rule because there is no "search." *State vs. Parker*, 355 So.2d 900 at 904 (1978) (being a particularly well-written and most comprehensive statement of the "plain view" doctrine by Dixon, J.) Compare *Pennsylvania v. Mimms*, 434

U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). The State submits this issue is well-settled and the allegation of error is meritless.

CONCLUSION

CONSIDERING THE FOREGOING REASONS, the State of Louisiana submits the petitioners' Application for Writ is without merit and should be dismissed.

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PROOF OF SERVICE

I hereby certify that three copies of the foregoing have been sent to William Noland, Esq., Attorney for Petitioners, 2739 Tulane Avenue, New Orleans, Louisiana 70186, by placing in the United States mail, postage prepaid this ____ day of May, 1980.

ABBOTT J. REEVES